

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TINA COLEMAN,

Plaintiff,

vs.

DANIEL N. GORDON, P.C., and ASSET
ACCEPTANCE, LLC,

Defendants.

No. CV-10-428-EFS

STIPULATED PROTECTIVE ORDER

The Court finds good cause to grant the parties' Motion for Protective Order, ECF No. [90](#). Accordingly, based on the parties' stipulation, the following protective order is **HEREBY ENTERED**:

I. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends

1 only to the limited information or items that are entitled, under the
2 applicable legal principles, to treatment as confidential. As set
3 forth in Section 10, below, this Protective Order creates no
4 entitlement to file confidential information under seal; the
5 procedures that must be followed and the standards that will be
6 applied when a Party seeks permission from the Court to file material
7 under seal will be governed by applicable law.

8 1. DEFINITIONS

9 1.1. Party: any party to this action, including all of its
10 officers, directors, employees, consultants, retained experts, and
11 outside counsel (and their support staff).

12 1.2. Disclosure or Discovery Material: all items or information,
13 regardless of the medium or manner generated, stored, or maintained
14 (including, among other things, testimony, transcripts, or tangible
15 things) that are produced or generated in disclosures or responses to
16 discovery in this matter.

17 1.3. "Confidential" Information or Items: information
18 (regardless of how generated, stored or maintained) or tangible
19 things that qualify for protection under standards developed under
20 Federal Rule of Civil Procedure 26(c).

21 1.4. Receiving Party: a Party that receives Disclosure or
22 Discovery Material from a Producing Party.
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1 1.5. Producing Party: a Party or non-party that produces
2 Disclosure or Discovery Material in this action.

3 1.6. Designating Party: a Party or non-party that designates
4 information or items that it produces in disclosures or in responses
5 to discovery as "Confidential."

6 1.7. Protected Material: any Disclosure or Discovery Material
7 that is designated as "Confidential."

8 1.8. Outside Counsel: attorneys who are not employees of a Party
9 but who are retained to represent or advise a party in this action.

10 1.9. House Counsel: attorneys who are employees of a Party.

11 1.10. Counsel (without qualifier): Outside Counsel and House
12 Counsel (as well as their support staffs).

13 1.11. Expert: a person with specialized knowledge or experience
14 in a matter pertinent to the litigation who has been retained by a
15 Party or its/her/his counsel to serve as an expert witness or as a
16 consultant in this action and who is not a past or a current employee
17 of a Party or of a competitor of a Party and who, at the time of
18 retention, is not anticipated to become an employee of a Party or a
19 competitor of a Party. This definition includes a professional jury
20 or trial consultant retained in connection with this litigation.

21 1.12. Professional Vendors: persons or entities that provide
22 litigation support services (e.g., photocopying; videotaping;
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1 translating; preparing exhibits or demonstrations; organizing,
2 storing, retrieving data in any form or medium; etc.) and their
3 employees and subcontractors.

4 2. SCOPE

5 The protections conferred by this Order cover not only Protected
6 Material (as defined above), but also all copies, excerpts,
7 summaries, or compilations thereof, plus testimony, conversations, or
8 presentations by parties or counsel to or in court or in other
9 settings that might reveal Protected Material.

10 3. DURATION

11 Even after the termination of this litigation, the
12 confidentiality obligations imposed by this Order shall remain in
13 effect until a Designating Party agrees otherwise in writing or a
14 Court order otherwise directs.

15 4. DESIGNATING PROTECTED MATERIAL

16 4.1. Exercise of Restraint and Care in Designating Material for
17 Protection. Each Party or non-party that designates information or
18 items for protection under this Order must use good faith efforts to
19 limit any such designation to specific material that qualifies under
20 the appropriate standards. A Designating Party must use good faith
21 efforts to designate for protection only those parts of material,
22 documents, items, or oral or written communications that qualify - so
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1 that other portions of the material, documents, items, or
2 communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited.
5 Designations that are shown to be clearly unjustified, or that have
6 been made for an improper purpose (e.g., to unnecessarily encumber or
7 retard the case development process, or to impose unnecessary
8 expenses and burdens on other parties), may expose the Designating
9 Party to sanctions. If it comes to a Party's or a non-party's
10 attention that information or items that it designated for protection
11 do not qualify for protection, that Party or non-party must promptly
12 notify all other parties that it is withdrawing the mistaken
13 designation.

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15 4.2. Manner and Timing of Designations. Except as otherwise
16 provided in this Order (see, e.g., second paragraph of section
17 5.2(a), below), or as otherwise stipulated or ordered, material that
18 qualifies for protection under this Order must be clearly so
19 designated before the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (apart from
22 transcripts of depositions or other pretrial or trial proceedings),
23 that the Producing Party affix the legend "CONFIDENTIAL" at the top
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1 of each page that contains protected material. If only a portion or
2 portions of the material on a page qualifies for protection, the
3 Producing Party also must clearly identify the protected portion(s)
4 (e.g., by making appropriate markings in the margins).

5 A Party or non-party that makes original documents or materials
6 available for inspection need not designate them for protection until
7 after the Inspecting Party has indicated which material it would like
8 copied and produced. During the inspection and before the
9 designation, all of the material made available for inspection shall
10 be deemed "CONFIDENTIAL." After the Inspecting Party has identified
11 the documents it wants copied and produced, the Producing Party must
12 determine which documents, or portions thereof, qualify for
13 protection under this Order, then, before producing the specified
14 documents, the Producing Party must affix the legend "CONFIDENTIAL"
15 at the top of each page that contains Protected Material. If only a
16 portion of the material on a page qualifies for protection, the
17 Producing Party also must clearly identify the protected portion(s)
18 (e.g., by making appropriate markings in the margins).

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20 (b) for testimony given in deposition or in other pretrial
21 or trial proceedings, that the party or non-party offering or
22 sponsoring the testimony identify on the record, before the close of
23 the deposition, hearing, or other proceeding, all protected
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1 testimony. When it is impractical to identify separately each portion
2 of testimony that is entitled to protection, and when it appears that
3 substantial portions of the testimony may qualify for protection, the
4 party or non-party that sponsors, offers, or gives the testimony may
5 invoke on the record (before the deposition or proceeding is
6 concluded) a right to have up to 20 days to identify the specific
7 portions of the testimony as to which protection is sought. Only
8 those portions of the testimony that are appropriately designated for
9 protection within the 20 days shall be covered by the provisions of
10 this Stipulated Protective Order.

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12 Transcript pages containing Protected Material must be separately
13 bound by the court reporter, who must affix to the top of each such
14 page the legend "CONFIDENTIAL," as instructed by the party or non-
15 party offering or sponsoring the witness or presenting the testimony.

16 (c) for information produced in some form other than
17 documentary, and for any other tangible items, that the Producing
18 Party affix in a prominent place on the exterior of the container or
19 containers in which the information or item is stored the legend
20 "CONFIDENTIAL." If only portions of the information or item warrant
21 protection, the Producing Party, to the extent practicable, shall
22 also identify the protected portions.

1 4.3. Inadvertent Failures to Designate. If timely corrected, an
2 inadvertent failure to designate qualified information or items as
3 "CONFIDENTIAL" does not, standing alone, waive the Designating
4 Party's right to secure protection under this Order for such
5 material. If material is appropriately designated as "CONFIDENTIAL"
6 after the material was initially produced, the Receiving Party, on
7 timely notification of the designation, must make reasonable efforts
8 to assure that the material is treated in accordance with the
9 provisions of this Order.

10 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 5.1. Timing of Challenges. Unless a prompt challenge to a
12 Designating Party's confidentiality designation is necessary to avoid
13 foreseeable substantial unfairness, unnecessary economic burdens, or
14 a later significant disruption or delay of the litigation, a Party
15 does not waive its right to challenge a confidentiality designation
16 by electing not to mount a challenge promptly after the original
17 designation is disclosed.

18 5.2. Meet and Confer. A Party that elects to initiate a
19 challenge to a Designating Party's confidentiality designation must
20 do so in good faith and must begin the process by conferring directly
21 (in voice to voice dialogue; other forms of communication are not
22 sufficient) with counsel for the Designating Party. In conferring,
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1 the challenging Party must explain the basis for its belief that the
2 confidentiality designation was not proper and must give the
3 Designating Party ten (10) days to review the designated material, to
4 reconsider the circumstances, and, if no change in designation is
5 offered, to explain the basis for the chosen designation.

6 A Challenging Party may proceed to the next stage of the challenge
7 process only if it has engaged in this meet and confer process first.

8 5.3. Formal Challenge to Designation. If, after engaging in the
9 meet and confer process, a Challenging Party still contends that a
10 confidentiality designation was not proper, the Challenging Party may
11 at any time give written notice to the Designating Party stating its
12 objection to the confidentiality designation. The Designating Party
13 has twenty-five (25) days from receipt of such written notice to
14 apply to the Court for an order specifically designating the
15 Disclosure or Discovery Material at issue as confidential. The party
16 seeking such an order has the burden of establishing good cause for
17 the Disclosure or Discovery Material to be treated as confidential.

18 5.4. Treatment of Information While Challenge is Pending.
19 Notwithstanding any challenge to the designation of Disclosure or
20 Discovery Material as confidential, all materials designated as such
21 must be treated as such and subject to this order until one of the
22 following Occurs:
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1 (a) the Designating Party withdraws its confidentiality
2 designation in writing;

3 (b) the Designating Party fails to apply to the Court for
4 an order designating the material confidential within the time period
5 specified above after receipt of a written challenge to such
6 designation; or

7 (c) the Court decides the material at issue is not subject
8 to protection as confidential under this order.

9 6. ACCESS TO AND USE OF PROTECTED MATERIAL

10 6.1. Basic Principles. A Receiving Party may use Protected
11 Material that is disclosed or produced by another party or by a non-
12 party in connection with this case only for prosecuting, defending,
13 or attempting to settle this litigation. Such Protected Material may
14 be disclosed only to the categories of persons and under the
15 conditions described in this Order. When the litigation has been
16 terminated, a Receiving Party must comply with the provisions of
17 section 11, below (FINAL DISPOSITION). Protected Material must be
18 stored and maintained by a Receiving Party at a location and in a
19 secure manner that ensures that access is limited to the persons
20 authorized under this Order.

22 6.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the Court or permitted in writing by the
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1 Designating Party, a Receiving Party may disclose any information or
2 item designated "CONFIDENTIAL" only to:

3 (a) the Receiving Party's Outside Counsel of record in
4 this action, as well as employees of said Counsel to whom it is
5 reasonably necessary to disclose the information for this litigation
6 and who have signed the "Agreement to Be Bound by Protective Order"
7 that is attached hereto as Exhibit A;

8 (b) the named parties to this litigation and the officers,
9 directors, and employees (including House Counsel) of the Receiving
10 Party to whom disclosure is reasonably necessary for this litigation
11 and who have signed the "Agreement to Be Bound by Protective Order"
12 (Exhibit A);

13 (c) experts (as defined in this Order) of the Receiving
14 Party to whom disclosure is reasonably necessary for this litigation
15 and who have signed the "Agreement to Be Bound by Protective Order"
16 (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters and videographers, and their staffs,
19 present at any hearing, deposition, or trial who have signed the
20 "Agreement to Be Bound by Protective Order" (Exhibit A);
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1 (f) professional vendors to whom disclosure is reasonably
2 necessary for this litigation and who have signed the "Agreement to
3 Be Bound by Protective Order" (Exhibit A);

4 (g) during their depositions, witnesses in the action to
5 whom disclosure is reasonably necessary and who have signed the
6 "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of
7 transcribed deposition testimony or exhibits to depositions that
8 reveal Protected Material must be separately bound by the court
9 reporter and may not be disclosed to anyone except as permitted under
10 this Stipulated Protective Order; and

11 (h) the author of the document or the original source of
12 the information.

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14 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
LITIGATION

15 If a Receiving Party is served with a subpoena or an order
16 issued in other litigation that would compel disclosure of any
17 information or items designated in this action as "CONFIDENTIAL," the
18 Receiving Party must so notify the Designating Party, in writing (by
19 fax, if possible) immediately and in no event more than three (3)
20 court days after receiving the subpoena or order. Such notification
21 must include a copy of the subpoena or court order.
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1 The Receiving Party also must immediately inform in writing the
2 party who caused the subpoena or order to issue in the other
3 litigation that some or all the material covered by the subpoena or
4 order is the subject of this Protective Order. In addition, the
5 Receiving Party must deliver a copy of this Stipulated Protective
6 Order promptly to the party in the other action that caused the
7 subpoena or order to issue.

8 The purpose of imposing these duties is to alert the interested
9 parties to the existence of this Protective Order and to afford the
10 Designating Party in this case an opportunity to try to protect its
11 confidentiality interests in the court from which the subpoena or
12 order issued. The Designating Party shall bear the burdens and the
13 expenses of seeking protection in that court of its confidential
14 material - and nothing in this Order should be construed as
15 authorizing or encouraging a Receiving Party in this action to
16 disobey a lawful directive from another court.

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18 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise,
20 it has disclosed Protected Material to any person or in any
21 circumstance not authorized under this Stipulated Protective Order,
22 the Receiving Party must immediately (a) notify in writing the
23 Designating Party of the unauthorized disclosures, (b) use its best
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1 efforts to retrieve all copies of the Protected Material, (c) inform
2 the person or persons to whom unauthorized disclosures were made of
3 all the terms of this Order, and (d) request such person or persons
4 to execute the "Acknowledgment and Agreement to Be Bound" that is
5 attached hereto as Exhibit A.

6 9. FILING PROTECTED MATERIAL

7 Without written permission from the Designating Party or a Court
8 order secured after appropriate notice to all interested persons, a
9 Party may not file in the public record in this action any Protected
10 Material. A Party that seeks to file under seal any Protected
11 Material must comply with applicable law.

12 10. FINAL DISPOSITION

13 Unless otherwise ordered or agreed in writing by the Producing
14 Party, within sixty (60) days after the final termination of this
15 action, each Receiving Party must return all Protected Material to
16 the Producing Party. As used in this subdivision, "all Protected
17 Material" includes all copies, abstracts, compilations, summaries or
18 any other form of reproducing or capturing any of the Protected
19 Material. With permission in writing from the Designating Party, the
20 Receiving Party may destroy some or all of the Protected Material
21 instead of returning it. Whether the Protected Material is returned
22 or destroyed, the Receiving Party must submit a written certification
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1 to the Producing Party (and, if not the same person or entity, to the
2 Designating Party) by the sixty day deadline that identifies (by
3 category, where appropriate) all the Protected Material that was
4 returned or destroyed and that affirms that the Receiving Party has
5 not retained any copies, abstracts, compilations, summaries or other
6 forms of reproducing or capturing any of the Protected Material.
7 Notwithstanding this provision, Counsel are entitled to retain an
8 archival copy of all pleadings, motion papers, transcripts, legal
9 memoranda, correspondence or attorney work product, even if such
10 materials contain Protected Material. Any such archival copies that
11 contain or constitute Protected Material remain subject to this
12 Protective Order as set forth in Section 4 (DURATION), above.

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14 11. MISCELLANEOUS

15 11.1. Right to Further Relief. Nothing in this Order abridges
16 the right of any person to seek its modification by the Court in the
17 future.

18 11.2. Right to Assert Other Objections. By stipulating to the
19 entry of this Protective Order no party waives any right it otherwise
20 would have to object to disclosing or producing any information or
21 item on any ground not addressed in this Stipulated Protective Order.
22 Similarly, no party waives any right to object on any ground to use
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1 in evidence of any of the material covered by this Stipulated
2 Protective Order.

3 **IT IS SO ORDERED.** The District Court Executive is directed to
4 enter this Order and distribute copies to counsel.

5 DATED this 23rd day of March 2012.

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7 s/Edward F. Shea

EDWARD F. SHEA

8 United States District Court Judge

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